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FINAL SETTLEMENT AND MUTUAL RELEASE

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Case Name: NORTHERN CALIFORNIA RIVER WATCH V HONEYWELL

Court: CA N.D. Cal.; 9th Cir.

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April 6, 2012

Judy B. Harvey, Attorney
U.S. Department of Justice
Environment and Natural Resource Division
Law and Policy Section
P.O. Box 4390
Ben Franklin Station
Washington, DC 20044-4390

DEPT OF JUSTICE - ENPD
ENVIRONMENT DIVISION
12 APR 10 P2:51

Re: *Northern California River Watch v. Honeywell Aerospace, et al*
United States District Court Case No: 03:11-cv-03723 EDL

Dear Attorney Harvey:

Pursuant to your letter of October 20, 2011 in the above-captioned matter, and in compliance with 33 U.S.C. § 1365(c)(3), we have enclosed for your review a copy of the Final Settlement and Mutual Release entered into by the parties in this matter.

Please note the Agreement is expected to be executed by Northern California River Watch within the next 10 days which will create the Effective Date of the Agreement. Payments due under the Agreement are expected within 30 days of the Effective Date, and a Request for Dismissal is required to be filed within 2 court days of receipt of payment. (See ¶¶ 2.B., 5). In light of these external deadlines, we would respectfully request that you expedite your review of this Agreement.

Thank you for your consideration.

Sincerely,


Jack Silver

JS:lhm

Enclosure

cc: James J. Finsten
Arnold & Porter LLP

plea
90-1-24-177-03115

C O P Y

FINAL SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Final Settlement Agreement and Mutual Release ("Agreement") effective as of the last date of execution below ("Effective Date"), is made by and between (1) Northern California River Watch ("Plaintiff"); and (2) Honeywell International Inc., a Delaware corporation ("Honeywell" or "Defendant").

WHEREAS, on or about July 28, 2011, Plaintiff filed a lawsuit in the United States District Court for the Northern District of California entitled Northern California River Watch v. Honeywell Aerospace, et al., and bearing case number CV-11-03723-WHA (the "Action");

WHEREAS, Plaintiff in the Action contends under various legal theories that Honeywell is liable for, among other things, violations of the Clean Water Act and the Resource Conservation and Recovery Act, relating to activities at 511 O'Neill Ave. in Belmont, California (the "Site");

WHEREAS, Honeywell denies that it is liable to Plaintiff in connection with the Action or otherwise;

WHEREAS, on or about February 7, 2012, the parties through their respective counsel engaged in formal mediation before Mr. William L. Nagle, Special Master;

WHEREAS, all parties to this Agreement wish to resolve and settle, for all time, all disputes, obligations, causes of action, and purported causes of action, both real and potential, which may exist between and among Plaintiff and Honeywell, including but not limited to those disputes, obligations, and causes of action that were or could have been asserted in the Action, and those arising out of or relating in any way to the Site;

NOW, THEREFORE, in consideration of the execution of this Agreement, the releases, satisfactions and promises made herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each party to this Agreement, it is hereby agreed as follows:

1. **Parties Bound By This Agreement.** This Agreement, and each of its provisions, including all representations, warranties, and promises contained herein, binds, and inures to the benefit of, Plaintiff and Honeywell, and each of their respective assigns, present and future affiliates, and predecessors and successors in interest whether by merger, consolidation, or otherwise, as well as their representatives, agents, attorneys, and administrators, past, present, and future.
2. **Actions and Payment By Honeywell.** In exchange for the delivery, execution, and performance of this Agreement and of the Release by Plaintiff, Honeywell will do the following:
 - A. Contingent upon approval by the California Regional Water Quality Control Board San Francisco Bay Region and subject to being able to obtain access rights to property it does not own, Honeywell will engage in

the following activities to optimize its existing and ongoing remediation at the Site:

1. *Subsurface Utility Survey.* Honeywell, in its sole discretion regarding methodology, will conduct a survey of subsurface utilities in an area adjacent to Belmont Creek (identified in the attached map) to identify possible preferential pathways created by active or inactive utilities. Locations of utilities would be evaluated along with historical monitoring data. If any pathways are identified, Honeywell will target additional Enhanced In Situ Bioremediation ("EISB") treatment to address those areas, consistent with Subsection 2.A.2, below.
2. *Installation of Additional Injection Wells at Area B.* Honeywell, in its sole discretion regarding methodology, will install at least two (2), and up to four (4), additional EISB injection wells in an area adjacent to Belmont Creek (identified in the attached map).

B. Payment. Within thirty (30) days of the Effective Date of this Agreement, Honeywell will pay to Plaintiff the total sum of Forty Thousand Dollars (\$40,000.00). Payment will be made in the form of a single check, payable to "Northern California River Watch" and will be mailed to Law Office of Jack Silver, P.O. Box 5469, Santa Rosa, CA 95402-5469.

3. Release. Plaintiff, on behalf of itself and any and all of its agents, representatives, successors, members, and assigns, does hereby absolutely, fully, and forever release, relieve, remise, and discharge Honeywell and its past, present, and future employees, officers, directors, agents, attorneys, contractors, representatives, affiliates, and the predecessors, successors, and assigns of any of them, from any and all causes of action, claims, damages (including punitive damages), demands, debts, actions, attorneys' fees, costs of suit, and liabilities of every kind or nature whatsoever, including but expressly not limited to any claims or obligations arising directly or indirectly out of or relating in any way to the Site or to the facts and circumstances described in the Action, or which could have been asserted in the Action, or in any other action. It is expressly understood and agreed that the foregoing release is intended to and does include a release relating to any and all claims that might now or in the future be brought in connection with the Site, facts, events, and incidents that gave rise to the Action. The release provided for herein shall be valid and effective whether the claims, causes of action, or liability hereby released (i) are known or unknown, suspected or unsuspected, (ii) are based in contract, tort, statute, or otherwise, or (iii) arise at law or in equity.

4. Waiver of Civil Code § 1542. The Release set forth in Paragraph 3 of this Agreement expressly and specifically extend to any and all claims, whether or not now known, claimed, or suspected by the persons giving the releases. The parties hereto represent and agree that each party individually has read and fully understands California Civil Code Section 1542, which provides the following:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Understanding the language of California Civil Code Section 1542 and being fully apprised of the legal import thereof, Plaintiff nonetheless expressly and specifically waives any and all rights and benefits conferred on it by California Civil Code Section 1542 and by any other similar law or legal principle or precedent of any jurisdiction.

5. Dismissal of Action. Within two (2) court days of Plaintiff's Counsel's receipt of the payment described in Paragraph 2.B., Plaintiff, through its attorneys will effectuate the full and final dismissal of the Action, with prejudice, each party to bear its own costs and attorneys' fees with respect thereto, by executing, serving, and filing a request for dismissal with prejudice ("Request for Dismissal").

6. Absence of Admissions. It is understood and agreed that the execution of this Agreement is not and shall not be construed as an admission of wrongdoing or liability by any party hereto. Honeywell expressly denies any wrongdoing or liability, and is entering this Agreement simply as a means to end the litigation.

7. Breach of Agreement and Dispute Resolution. Any disputes between Plaintiff and Honeywell concerning any alleged breach of this Agreement shall be subject to the following dispute resolution procedure:

- A. Plaintiff and Honeywell shall make good faith efforts to resolve informally any alleged breach of the Agreement.
- B. If informal efforts to resolve the alleged breach are unsuccessful, that party shall provide written notice of the alleged breach and that party's intent to initiate the dispute resolution procedure of this Section. The notice shall include a recitation of all facts and circumstances giving rise to the dispute, including the particular provisions of the Agreement alleged to have been breached.
- C. If the dispute is not resolved by the parties within thirty (30) days after such notice is given, such dispute shall be submitted to William L. Nagle, Special Master/Mediator for binding arbitration. If Mr. Nagle is unavailable to preside over the arbitration, the parties agree to binding arbitration before a mutually agreeable neutral arbitrator. In the event that binding arbitration occurs, the parties agree that no discovery shall be permitted. Briefing will be limited to one brief of no longer than ten (10) pages for each party, submitted no later than fourteen (14) days before the scheduled Arbitration hearing. The Arbitration hearing is limited to a maximum of one (1) day. The determination of Mr. Nagle shall be

binding upon the parties. Within thirty (30) days after the conclusion of the Arbitration hearing, Mr. Nagle shall issue a written award and a written statement of decision describing the reasons for the award, including the calculation of any damages awarded. The non-prevailing party shall bear the cost of the arbitrator's fees. Otherwise, the parties shall each bear their own costs and attorney's fees incurred in connection with such binding arbitration. Judgment upon any determination rendered by Mr. Nagle may be entered by any court having competent jurisdiction.

- D. By agreeing to this binding arbitration provision, the parties understand that they are waiving certain important rights and protections that otherwise may have been available to each of them if a dispute between them were determined by a judicial action including, without limitation, the right to a jury trial, and certain rights of appeal.
- E. Other than the remedies contained within this Agreement including dispute resolution and specific performance of the terms of this Agreement, there are no other remedies. The parties specifically agree that there is no basis within this Agreement or within the contemplation of the parties to support a claim for consequential damages due to any form of breach.

8. Parties' Acknowledgment of Terms. This Agreement has been carefully and fully read and reviewed by Plaintiff and Honeywell, and their respective counsel, and each hereby represents that he, she, or it understands the contents of this Agreement and agrees that this Agreement is binding on him, her, or it and on his, her, or its respective predecessors, successors, and assigns and as described above. Plaintiff further acknowledges that it has had the opportunity to confer with its counsel regarding, and to ask questions about, this Agreement.

9. Interpretation and Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California without regard to principles of conflicts of law. This Agreement shall be interpreted and construed as a whole, according to its fair meaning and not strictly for or against any party, and without regard to which party drafted the Agreement. All of the promises, representations, and warranties contained in this Agreement survive the execution of this Agreement.

10. Attorneys' Fees. Each party to this Agreement shall bear its own attorneys' fees and costs relating to the Action, as well as to the preparation and negotiation of this Agreement.

11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall evidence one and the same agreement.

12. Headings. The headings used in this Agreement are for convenience of reference and shall not be used to define any provision.

13. Entire Agreement In Writing. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter set forth herein and supersedes all

previous or contemporaneous negotiations, commitments (oral or written), and writings with respect to the subject matter set forth herein.

14. Modification or Amendment. This Agreement or any of its provisions may be modified or amended only by written agreement executed by all parties to this Agreement.

15. No Assignments. Each party to this Agreement represents and warrants that it has not assigned, transferred, hypothecated, or sold to any third person or entity any of the rights or obligations released by or entered into under this Agreement.

16. Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court or other tribunal and, if it cannot be so modified, that this Agreement shall be deemed amended to delete herefrom such provision or portion adjudicated to be invalid or unenforceable, and this Agreement shall be deemed to be in full force and effect as so modified. Any such modification or amendment in any event shall apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.

17. Representations and Warranties. This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. No party, nor any officer, agent, employee, representative, or attorney of or for any party, has made any statement or representation to any other party regarding any fact relied upon in entering this Agreement, and no party is relying upon any statement, representation, or promise of any other party, nor of any officer, agent, employee, representative, or attorney of or for any party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

18. Authority. Each of the persons signing this Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.


IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

Dated: April 4, 2012.

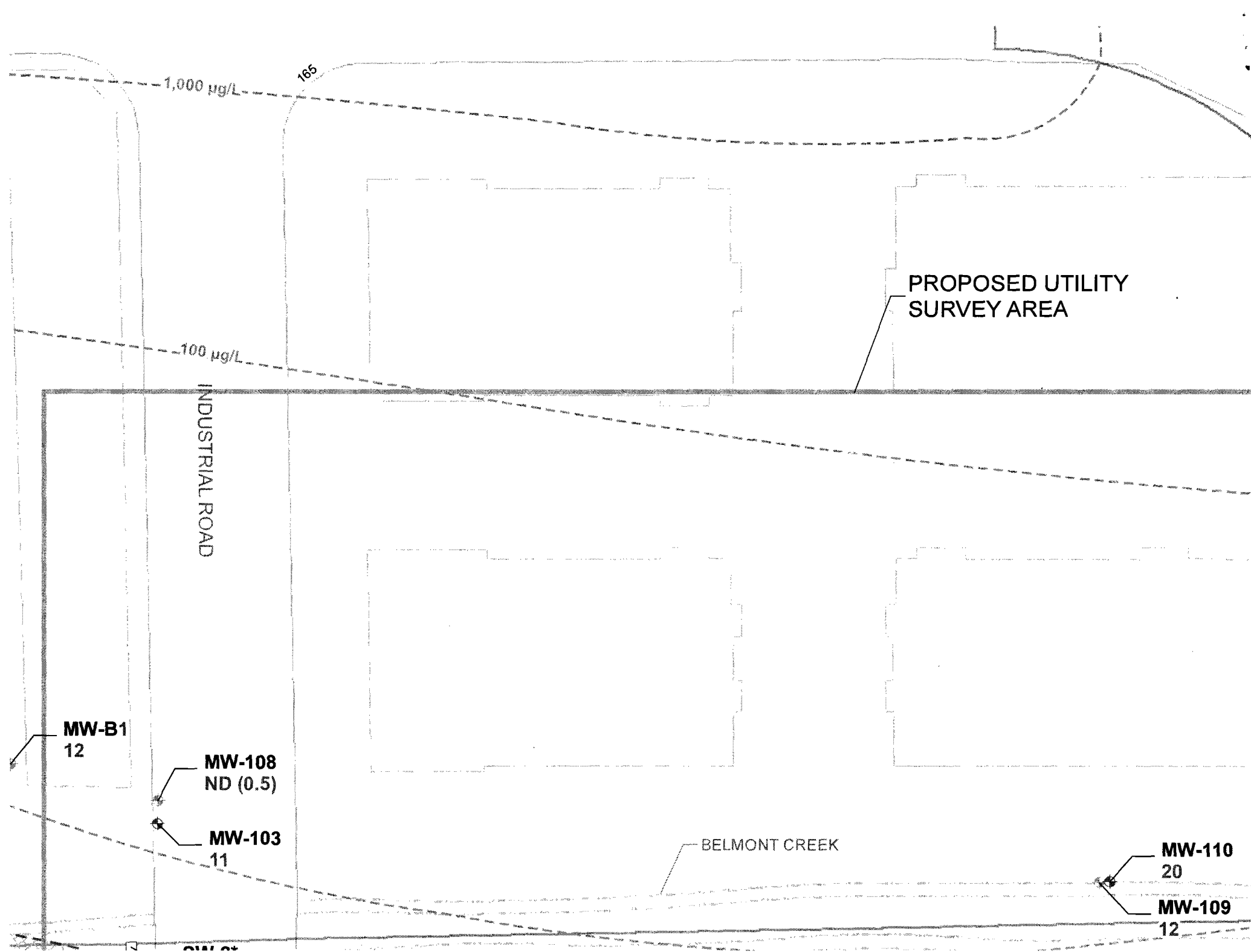
Dated: April __, 2012.

HONEYWELL INTERNATIONAL INC.

NORTHERN CALIFORNIA
RIVER WATCH

By:  _____

By: _____



Law Office of Jack Silver
P.O. Box 5469
Santa Rosa, CA 95402-5469



Judy B. Harvey, Attorney
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